



Queensland

COVID-19 Emergency Response Act 2020
Manufactured Homes (Residential Parks) Act 2003

Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020

Current as at 25 September 2020

Repeal/Expiry Information

This is the last reprint before expiry. Expired on 30 April 2022 the COVID-19 legislation expiry day—see 2003 Act No. 74 s 146A(8).

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Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020

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Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020

Part 1 Preliminary

1 Short title

This regulation may be cited as the *Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020*.

2 Commencement

Part 5 is taken to have commenced on 19 March 2020.

3 Declaration

This regulation is made under—

- (a) the *COVID-19 Emergency Response Act 2020*, section 8; and
- (b) the *Manufactured Homes (Residential Parks) Act 2003*, section 146A.

4 Application of regulation

- (1) This regulation modifies the *Manufactured Homes (Residential Parks) Act 2003*.
- (2) In this regulation, a reference to the Act is a reference to the *Manufactured Homes (Residential Parks) Act 2003*.

Part 2

Site rent increases—19 March to 24 May 2020

5 Dispute negotiation notice may be given by home owner

- (1) This section applies if—
 - (a) the park owner for a residential park gave a home owner for an eligible site a general increase notice for a proposed increase in site rent based on a market review of site rent; and
 - (b) as a result of the notice, during the period beginning on 19 March 2020 and ending on 24 May 2020, the site rent increased; and
 - (c) the home owner considers the amount of the increase to be excessive; and
 - (d) the home owner considers that insufficient consultation was carried out with interested entities under section 69D of the Act in relation to the increase in site rent for any of the following reasons—
 - (i) social distancing requirements under a public health direction under the *Public Health Act 2005*, section 362B;
 - (ii) the home owner was unable to participate in the consultation because of the COVID-19 emergency;
 - (iii) the home owner was unable to receive legal advice about the dispute because of the COVID-19 emergency.
- (2) Subsection (1) applies even if the site rent increase was less than the site rent increase proposed in the general increase notice.
- (3) The home owner may give the park owner a dispute negotiation notice for the dispute.
- (4) The notice must be given by 20 November 2020.

6 Matters to which tribunal may have regard

If a dispute negotiation notice is given under section 5, section 70(5) of the Act applies to the dispute as if the following provision were inserted in that subsection—

- (m) for a dispute in which a home owner considers that insufficient consultation was carried out with interested entities under section 69D—
 - (i) public health directions under the *Public Health Act 2005*, section 362B;
 - (ii) the consultation that took place under section 69D in relation to the increase in site rent;
 - (iii) the extent to which interested entities provided their views on the proposed increase in site rent during the consultation;
 - (iv) the nature of the arrangements for carrying out the consultation;
 - (v) any circumstances that adversely affected the ability of the home owner to take part in the consultation;
 - (vi) whether or not the home owner was able to receive legal advice in relation to the consultation within 28 days of the day the general increase notice was given;
 - (vii) whether or not the home owner was able to meet with other home owners to discuss the proposed increase in site rent.

7 New disputes and earlier disputes

- (1) This section applies if—

- (a) a dispute negotiation notice is given by a home owner under section 5 in relation to a site rent increase (the *new dispute*); and
 - (b) another dispute (the *earlier dispute*) about the same site rent increase has been finally dealt with by the tribunal.
- (2) The following provisions of the Act do not apply to the new dispute—
- (a) part 17, division 1, other than section 107(1)(a);
 - (b) section 116.
- (3) The home owner may apply to the tribunal under part 17, division 2 of the Act for an order to resolve the new dispute.
- (4) For subsection (1)(b), an earlier dispute has been finally dealt with by the tribunal if the tribunal has made a decision.

8 New disputes and existing disputes

- (1) This section applies if—
- (a) a dispute negotiation notice is given by a home owner under section 5 in relation to a site rent increase (the *new dispute*); and
 - (b) another dispute to which the home owner is a party (the *existing dispute*) about the same site rent increase has not been finally dealt with.
- (2) Subsection (3) applies if an application has been made under section 108(1) of the Act for mediation of the existing dispute and—
- (a) mediation of the dispute has not started; or
 - (b) mediation of the dispute has started but not ended.
- (3) For subsection (2)—
- (a) part 17, division 1, subdivision 2 (other than section 107(1)(a)) of the Act does not apply to the new dispute; and

- (b) the new dispute and the existing dispute must be mediated together by—
 - (i) if subsection (2)(a) applies—a single mediator appointed for both disputes; or
 - (ii) if subsection (2)(b) applies—the mediator for the existing dispute.
 - (c) the home owner must, at the same time as the home owner gives the dispute negotiation notice to the park owner—
 - (i) notify the mediator in writing of the new dispute; and
 - (ii) give a copy of the dispute negotiation notice to the mediator.
- (4) If the tribunal has started but not finished hearing the existing dispute—
- (a) part 17, division 1, subdivisions 2 (other than section 107(1)(a)) and 3 of the Act do not apply to the dispute; and
 - (b) the new dispute and the existing dispute must be heard together by the tribunal; and
 - (c) the home owner must, at the same time as the home owner gives the dispute negotiation notice to the park owner—
 - (i) notify the registrar of the tribunal in writing of the new dispute; and
 - (ii) give a copy of the dispute negotiation notice to the registrar of the tribunal.
- (5) For subsection (1)(b), an existing dispute has not been finally dealt with by the tribunal if the tribunal has not made a decision.

Maximum penalty—20 penalty units.

Example—

The weekly amount of the site rent increase for an eligible site is \$10. The site rent increase started on 1 July 2020. The number of days in the refund period is 184. The relevant weeks factor is 184 divided by 7 and rounded down, namely 26. The park owner must pay the home owner for the eligible site \$10 multiplied by the relevant weeks factor of 26, namely \$260.

(4) In this section—

refund period means the period from the day the site rent increased to 31 December 2020, both days inclusive.

relevant weeks factor means the number of days in the refund period, divided by 7, and rounded down to the nearest whole number.

10 Dispute negotiation notice may be given by home owner

(1) This section applies if—

- (a) a site rent increase continuation notice is given under section 9; and
- (b) the home owner of the eligible site considers the amount of the site rent increase to be excessive; and
- (c) the home owner considers that insufficient consultation was carried out with interested entities under section 69D of the Act in relation to the increase in site rent for any of the following reasons—
 - (i) social distancing requirements under a public health direction under the *Public Health Act 2005*, section 362B;
 - (ii) the home owner was unable to participate in the consultation because of the COVID-19 emergency;
 - (iii) the home owner was unable to receive legal advice about the dispute because of the COVID-19 emergency.

- (2) Subsection (1) applies even if the site rent increase was less than the site rent increase proposed in the general increase notice.
- (3) The home owner may give the park owner a dispute negotiation notice for the dispute.
- (4) The notice must be given within 56 days of the day the site rent increase continuation notice is given.

11 Matters to which tribunal may have regard

If a dispute negotiation notice is given under section 10, section 70(5) of the Act applies to the dispute as if the following provision were inserted in that subsection—

- (m) for a dispute in which a home owner considers that insufficient consultation was carried out with interested entities under section 69D—
 - (i) public health directions under the *Public Health Act 2005*, section 362B;
 - (ii) the consultation that took place under section 69D in relation to the increase in site rent;
 - (iii) the extent to which interested entities provided their views on the proposed increase in site rent during the consultation;
 - (iv) the nature of the arrangements for carrying out the consultation;
 - (v) any circumstances that adversely affected the ability of the home owner to take part in the consultation;
 - (vi) whether or not the home owner was able to receive legal advice in relation to the consultation within 28 days of

the day the general increase notice was given;

- (vii) whether or not the home owner was able to meet with other home owners to discuss the proposed increase in site rent.

12 New disputes and earlier disputes

- (1) This section applies if—
- (a) a dispute negotiation notice is given by a home owner under section 10 in relation to a site rent increase (the *new dispute*); and
 - (b) another dispute (the *earlier dispute*) about the same site rent increase has been finally dealt with by the tribunal.
- (2) The following provisions of the Act do not apply to the new dispute—
- (a) part 17, division 1, other than section 107(1)(a);
 - (b) section 116.
- (3) The home owner may apply to the tribunal under part 17, division 2 of the Act for an order to resolve the new dispute.
- (4) For subsection (1)(b), an earlier dispute has been finally dealt with by the tribunal if the tribunal has made a decision.

13 New disputes and existing disputes

- (1) This section applies if—
- (a) a dispute negotiation notice is given by a home owner under section 10 in relation to a site rent increase (the *new dispute*); and
 - (b) another dispute to which the home owner is a party (the *existing dispute*) about the same site rent increase has not been finally dealt with.

- (2) Subsection (3) applies if an application has been made under section 108(1) of the Act for mediation of the existing dispute and—
 - (a) mediation of the dispute has not started; or
 - (b) mediation of the dispute has started but not ended.
- (3) For subsection (2)—
 - (a) part 17, division 1, subdivision 2 (other than section 107(1)(a)) of the Act does not apply to the new dispute; and
 - (b) the new dispute and the existing dispute must be mediated together by—
 - (i) if subsection (2)(a) applies—a single mediator appointed for both disputes; or
 - (ii) if subsection (2)(b) applies—the mediator for the existing dispute.
 - (c) the home owner must, at the same time as the home owner gives the dispute negotiation notice to the park owner—
 - (i) notify the mediator in writing of the new dispute; and
 - (ii) give a copy of the dispute negotiation notice to the mediator.
- (4) If the tribunal has started but not finished hearing the existing dispute—
 - (a) part 17, division 1, subdivisions 2 (other than section 107(1)(a)) and 3 of the Act do not apply to the dispute; and
 - (b) the new dispute and the existing dispute must be heard together by the tribunal; and
 - (c) the home owner must, at the same time as the home owner gives the dispute negotiation notice to the park owner—

- (i) notify the registrar of the tribunal in writing of the new dispute; and
 - (ii) give a copy of the dispute negotiation notice to the registrar of the tribunal.
- (5) For subsection (1)(b), an existing dispute has not been finally dealt with by the tribunal if the tribunal has not made a decision.

Division 2 Site rent increase continuation notice not given

14 Site rent increase stops having effect

- (1) This section applies if—
 - (a) there was a site rent increase for an eligible site (the *original site rent increase*), on the basis of a market review of site rent, during the period beginning on 25 May 2020 and ending on the day before the commencement; and
 - (b) no site rent increase continuation notice is given under section 9 by the park owner to the home owner of the eligible site within 14 days of the commencement.
- (2) On the day that is 14 days after the commencement (the *start day*) the site rent increase stops having effect.
- (3) For the period starting on the start day and ending on the next general increase day for the eligible site, the site rent is increased on the basis of an increase in the CPI number.
- (4) If the site agreement for the eligible site provides terms for an increase of site rent based on an increase in the CPI number, the increase in site rent under subsection (3) must be in accordance with those terms.
- (5) If the site agreement for the eligible site does not provide terms for an increase of site rent based on an increase in the CPI number, the increase in site rent under subsection (3)

must be based on the annual CPI change published by the Australian Bureau of Statistics for the quarter that ended immediately before the day of the original site rent increase.

Examples—

- 1 If the site rent increased on the basis of a market review on 27 May 2020, the site rent increase on the basis of an increase in the CPI number will be based on the annual CPI change published for March 2019 to March 2020.
 - 2 If the site rent increased on the basis of a market review on 1 July 2020, the site rent increase on the basis of an increase in the CPI number will be based on the annual CPI change published for June 2019 to June 2020.
- (6) If, under subsection (5), the annual CPI change published for a quarter by the Australian Bureau of Statistics is a negative number, the park owner is not required to decrease site rent.
 - (7) Despite any statement to the contrary in the site agreement for the eligible site, the park owner may increase the site rent on the next general increase day by an amount worked out on the basis of a market review of site rent.
 - (8) By 6 November 2020, the park owner must refund to the home owner the amount that is the difference between the increased amount and the CPI amount.

Maximum penalty—20 penalty units.

- (9) Within 14 days of the start day, the park owner must give the home owner a notice stating that—
 - (a) the site rent increase that was in effect before the commencement has stopped having effect; and
 - (b) the site rent increase has been replaced by an increase on the basis of an increase in the CPI number; and
 - (c) the home owner is entitled to a refund from the park owner, by 6 November 2020, of the amount that is the difference between the increased amount and the CPI amount; and
 - (d) the park owner may undertake a market review for which the general increase day will be at least 1 year

from the day the site rent last increased on the basis of a market review.

Maximum penalty—20 penalty units.

- (10) To remove any doubt, it is declared that sections 69D to 70 of the Act apply to the next general increase day.
- (11) In this section—

CPI amount means the amount of site rent that would have been payable under the site agreement if the site rent increase had been based on an increase in the CPI number for the period starting on the day of the original site rent increase and ending on the start day.

increased amount means the amount paid for site rent by the home owner for the period starting on the day of the original site rent increase and ending on the start day.

15 Proceedings are ended

- (1) This section applies if—
- (a) a site rent increase for an eligible site stops having effect under section 14(2); and
 - (b) a dispute negotiation notice in relation to the site rent increase was given by the home owner of the eligible site.
- (2) On the commencement—
- (a) if the parties to the dispute are negotiating a resolution of the dispute under part 17, division 1, subdivision 2 of the Act—the negotiation is ended; and
 - (b) if the dispute has been referred for mediation under part 17, division 1, subdivision 3 of the Act—the mediation is ended; and
 - (c) if the dispute is the subject of a proceeding before the tribunal under part 17, division 2 of the Act—the proceeding is ended.

- (2) The site rent may instead increase on the basis of an increase in the CPI number if the park owner gives the home owner of the eligible site a notice stating that the site rent is to increase on that basis.
- (3) The notice must state—
 - (a) that the site rent is increasing on the basis of an increase in the CPI number under this regulation; and
 - (b) the amount of the site rent increase; and
 - (c) the day the site rent increase starts; and
 - (d) that the park owner may undertake a market review for which the general increase day will be at least 1 year from the day the site rent would have increased if this regulation had not been made.
- (4) The increase of site rent under subsection (2) must be based on the annual CPI change published by the Australian Bureau of Statistics for the quarter that ended immediately before the day that is 14 days before the day the notice is given.

Examples—

- 1 The notice is given under subsection (2) on 1 October 2020. Fourteen days before 1 October is 17 September. The site rent increase on the basis of an increase in the CPI number will be based on the annual CPI change published for June 2019 to June 2020.
 - 2 The notice is given under subsection (2) on 15 December 2020. Fourteen days before 15 December is 1 December. The site rent increase on the basis of an increase in the CPI number will be based on the annual CPI change published for September 2019 to September 2020.
- (5) If, under subsection (4), the annual CPI change published for a quarter by the Australian Bureau of Statistics is a negative number, the park owner is not required to decrease site rent.
 - (6) The increase of site rent under subsection (2) may start on or after the general increase day (the *relevant day*) for the eligible site on which the site rent would have increased but for section 10(1).

- (7) Section 69B(2) of the Act does not apply if an increase in site rent under subsection (2) takes place on a day after the relevant day.

Part 5 Other

18 Audio links and audio visual links

- (1) In section 81(3) of the Act, the reference to a meeting is taken to include a reference to a meeting held using audio links or audio visual links.
- (2) A home owners committee established under section 100 of the Act may meet using audio links or audio visual links.
- (3) If the constitution of a home owners committee requires that the home owners for a residential park meet to elect a new home owners committee, the home owners may meet using audio links or audio visual links.
- (4) The requirement in section 107 of the Act that the parties meet at a nominated place or another place is satisfied if the parties meet using audio links or audio visual links.
- (5) The requirement in section 108(3)(b)(ii) of the Act that the registrar give written notice of a place for a mediation conference is taken to be satisfied if the registrar gives written notice that the mediation conference will be held using audio links or audio visual links.
- (6) A mediation conference under part 17, division 1, subdivision 3 of the Act may be held using audio links or audio visual links.